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July 5, 2013

Kaitlin Eger
Sr. Campaign Finance & Reviewing Analyst
Reports Analysis Division
Federal Election Commission
Washington, D.C. 20463

Re: Committee On Letter Carriers Political Education (Letter Carriers Political Action Fund)PAC,
ID number C00023580, Amended Post-General Report Form 3X, 10/18/2012-11/26/2012)

Dear Ms. Eger:

As informally requested by telephone from the Reports Analysis Division, we are responding further to Item Number 3 of your RFAI letter dated April 14, 2003, which requests the Committee to ?clarify the disbursement(s) made for ?Membership Communications? and ?GOTV mailing sent to members?? on Line 21(b). Your letter also states:

If this disbursement(s) constitutes a communication to your restricted class which is exempt from the definition of contribution and expenditure under 11 CFR ? 114.3, it should be disclosed on Line 29 of the Detailed Summary Page. Furthermore, the purpose of the disbursement should include the type of expense, the name, office sought, state, and district, if applicable; [sic] of each federal candidate identified in the communication, and a statement that the expense is for an internal communication to the restricted class (Advisory Opinion 2000-03). Please amend your report to properly disclose this activity or provide clarifying information.

The request in Item Number 3 does not comport with any statutory or regulatory requirements, and it does not accurately reflect Advisory Opinion (AO) 2000-03. We are aware that your office has made identical requests to other committees at different times (including even the typographical error noted in the quoted material), but as far as we are aware there has never been an explanation by your office or the Commission otherwise as to the basis for such requests.

We also note that none of the entries at issue are accurately quoted in your letter. Each provides a purpose of ?Membership Comm/Outreach.? Some previously stated a purpose of ??GOTV mailings sent to members?; they were changed to ?Membership Comm/Outreach? in the amendment filed on May 14, 2013. In this amendment, we also moved the entries at issue from Line 21(b) to Line 29, as suggested in your letter, although we believe that Line 21(b) is the more appropriate line because the Instructions to Form 3X generally describe Line 21(b) as appropriate for communications about federal candidates that are not independent expenditures, and they generally describe Line 29 as appropriate for communications about nonfederal candidates. As we have indicated in memo text, all of the reported disbursements paid for communications with the restricted class of the Committee?s connected organization about federal candidates.

Item Number 3 of the RFAI marks the first time since AO 2000-03 issued 13 years ago that your office has invoked that AO to request additional information from the Committee concerning a disbursement it made for membership communications. But the Committee in previous reports had described similar disbursements. See, e.g, Post-General Report 2010 ("Internal PAC Communication Printing"; pg. 1606); Post-General Report 2008 ("Mailing"; pg. 88).

Advisory Opinion 2000-3 acknowledged that a political committee that was the separate segregated fund (SSF) of an Internal Revenue Code ? 501(c)(6) membership organization could pay the costs of appearances by federal candidates before the organization?s restricted class members and the SSF could expressly advocate the candidate?s election and solicit members to contribute to the candidates. The Commission advised that in these circumstances the SSF was acting on behalf of the organization, and the disbursements therefore were exempt from the Act?s definitions of ?contribution? and ?expenditure.?

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However, the Commission also stated that because the SSF would be the reporting entity, the reporting threshold for reports by a membership organization under 11 C.F.R. ? 104.6 did not apply, and the Commission cited instead the ordinary statutory and regulatory provisions governing a political committee's reporting, namely, 2 U.S.C. ? 434(b)(6)(B)(v) and 11 C.F.R. ? 104.3(b)(1)(ix)(B), which require that a committee report a disbursement's purpose. The AO advised the inquiring SSF to state the type of expense, the candidate making the appearance, and a statement that this is an expense for an internal communication to the members.

Even assuming that AO 2000-03 ? which the Commission has not since cited in any other advisory opinion or incorporated in its regulations ? reflects the Commission's current view, none of the costs incurred by the Committee that are reflected on its reports at issue pertain to a candidate appearance before the restricted class; and, even for that kind of event AO 2000-3 did not require identification of the state, district and office sought of any candidate. Instead, it stated in pertinent part:

In stating the purpose of each such itemized disbursement, [the committee] should state the type of expense, the candidate making the appearance, and a statement that this is an expense for an internal communication to the members. An example would be ?reception room rental for House candidate Jane Doe (2d CD NY)/ internal communication to members.?

An AO cannot, of course, require the requesting committee to do anything, let alone an unrelated committee like the Committee here, and let alone when that unrelated committee is not engaged in a materially identical activity. See generally 2 U.S.C. ? 437f(c); 11 C.F.R. ? 112.5. That governing legal principle is doubly true for an ?example? included in such an AO.

Indeed, both the Commission's previous (June 2001) and current (January 2007) Campaign Guide For Corporations and Labor

Organizations describe AO 2000-03 in identical terms with respect to ?a candidate appearance,? and neither suggests that the advice in that opinion would pertain to other kinds of disbursements; and, to our knowledge the Commission has not otherwise addressed the reporting issue with respect to other disbursements by a political committee that involve membership outreach. Moreover, even if the requirements of 11 C.F.R. ? 104.6 applied here, which they do not, they would require reports only of disbursements for express advocacy communications that are not primarily about other subjects. In fact, the RFAs do not even mention express advocacy as a prerequisite to further itemization. Nor do the instructions for Schedule B.

The Committee has relied upon these long-time reporting rules, practices and understandings of the law. If there has been a change of reporting policy with respect to such matters, then the Commission must inform the regulated community at large, or, as seems more appropriate, either issue a policy statement or undertake a rulemaking, in either case with appropriate public notice and opportunity to comment. None of that has occurred, and neither your office nor the Commission has explained why it need not occur.

Accordingly, your office should not refer this matter to the Office of General Counsel, and the Commission should take no adverse action with respect to the entries at issue in our original report or the amended report, including but not limited to any determination that any such entry detracts from the Committee's satisfaction of ?the threshold requirements for substantial compliance with the Act? under 2 U.S.C. ? 439(b) or 11 C.F.R. ? 104.16. We request written assurance from your office that no such referral or adverse action will occur.

Yours sincerely,

Laurence E. Gold
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